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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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FRANK MONACO BAZZO,

Case No. 1:21-cv-01343-KES-CDB (PC)

Plaintiff,

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS TO DENY
PLAINTIFF'S MOTION FOR JUDGMENT
ON THE PLEADINGS AND MOTION FOR
INJUNCTIVE RELIEF

v.

S. GATES, et al.

Defendants.

Doc. 60

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Plaintiff Frank Monaco Bazzo is a state prisoner proceeding pro se in this civil rights action filed under 42 U.S.C. § 1983. This matter was referred to a United States magistrate judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

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On August 8, 2024, the assigned magistrate judge issued findings and recommendations recommending denial of Plaintiff's motion for judgment on the pleadings and injunctive relief. Doc. 60. The findings and recommendations were served on Plaintiff and contained notice that any objections thereto were to be filed within fourteen days of service. *Id.* at 17. Plaintiff filed objections to the findings and recommendations on August 21, 2024. Doc. 61.

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In accordance with the provisions of 28 U.S.C. § 636(b)(1), the Court has conducted a de novo review of this case, including Plaintiff's objections. In his objections, Plaintiff asserts that the denial of his motion for judgment on the pleadings is improper because Defendants did not support their affirmative defenses with admissible evidence. Doc. 61 at 4–5. However, at the

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1 pleading stage of litigation, Defendants are not required to support affirmative defenses with
2 admissible evidence. Rather, they “need only raise questions of material fact or present
3 affirmative defenses; they are not yet required to prove their case.” *Hamilton v. Yates*, 2014 WL
4 4660814, *2 (E.D. Cal. Sept. 17, 2014) (citing *Gen. Conf. Corp. of Seventh-Day Adventists v.*
5 *Seventh-Day Adventist Congregational Church*, 887 F.2d 228, 230 (9th Cir. 1989)).

6 Plaintiff also objects to the recommended denial of injunctive relief. Doc. 61 at 2. The
7 magistrate judge found the court could not award the injunctive relief Plaintiff seeks, as Plaintiff
8 requests an order directing the California Department of Corrections and Rehabilitation
9 (“CDCR”) to take certain actions, but CDCR is not a party to this case and the court therefore
10 does not have personal jurisdiction over CDCR. While Plaintiff objects that CDCR is no longer a
11 party because the Court dismissed CDCR in a prior order (*see* Docs. 25, 27, 28), that dismissal
12 was appropriate and Plaintiff cannot relitigate it through his objections to these new findings and
13 recommendations. Therefore, Plaintiff’s objections do not undermine the magistrate judge’s
14 analysis.

15 Having carefully reviewed the file, including Plaintiff’s objections, the Court finds the
16 findings and recommendations to be supported by the record and proper analysis.

17 Accordingly, **IT IS HEREBY ORDERED** that:

- 18 1. The findings and recommendations issued on August 8, 2024 (ECF No. 60) are
19 **ADOPTED** in full;
20 2. Plaintiff’s motion for judgment on the pleadings and for injunctive relief (ECF No. 54)
21 is **DENIED**; and
22 3. This matter is referred back to the assigned magistrate judge for further proceedings.

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25 IT IS SO ORDERED.
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27 Dated: December 13, 2024


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UNITED STATES DISTRICT JUDGE